

1 THE HONORABLE JUDGE TANA LIN
2
3
4
5
6
7
8
9

10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE
13
14

15 SEAGEN INC.,

16 Petitioner,

17 v.

18 DAIICHI SANKYO CO., LTD.,

19 Respondent.

20 No. 2:22-cv-01613-TL

21 **DAIICHI SANKYO COMPANY, LIMITED'S
22 OPPOSITION TO SEAGEN INC.'S PETITION
23 TO VACATE ARBITRATION AWARD AND
24 MEMORANDUM IN SUPPORT**

25 **NOTE ON MOTION CALENDAR:
February 10, 2023**

DAIICHI SANKYO COMPANY, LIMITED'S OPPOSITION
TO SEAGEN INC.'S PETITION TO VACATE
ARBITRATION AWARD AND MEMORANDUM IN
SUPPORT

26 CORR CRONIN LLP
1015 Second Avenue, Floor 10
Seattle, Washington 98104-1001
Tel (206) 625-8600
Fax (206) 625-0900

1 TABLE OF CONTENTS

2	I. INTRODUCTION.....	1
3	II. RELEVANT BACKGROUND.....	3
4	A. Seagen’s Wrongful Attempt to Misappropriate DSC’s Technology	3
5	B. Selection of the Arbitrator, the Arbitral Hearing, and the Award	4
6	III. JURISDICTION.....	6
7	IV. ARGUMENT	7
8	A. Legal Standard	7
9	B. Seagen’s Petition to Vacate Should Be Denied As Meritless	8
10	1. Seagen Misrepresents the Award’s Rulings Regarding Application of a Statute of Limitations to Seagen’s Quiet Title Claim.....	8
11	2. Seagen Impermissibly Asks the Court to Disregard the Arbitrator’s Factual Findings and Legal Conclusions	11
12	3. Seagen Fails to Acknowledge the Arbitrator’s Factual Finding that DSC’s Technology Does Not Even Meet the First Eligibility Criterion for Assignable Technology Under the Parties’ Agreement	18
13	C. Seagen’s Petition to Vacate Should Also Be Dismissed As Untimely	20
14	V. SEAGEN’S BAD FAITH PETITION JUSTIFIES AWARDING DSC ITS COSTS AND ATTORNEYS’ FEES	22
15	VI. CONCLUSION	24

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Affymax, Inc. v. Ortho-McNeil-Janssen Pharms, Inc.</i> , 660 F. 3d 281 (7th Cir. 2011)	8
<i>Albra v. Advan, Inc.</i> , 490 F.3d 826 (11th Cir. 2007)	20
<i>Aperion Care, Inc. v. Senwell Senior Inv. Advisors</i> , No. 22 C 3120, 2022 WL 10505696 (N.D. Ill. Oct. 17, 2022)	21
<i>Aspic Engineering v. ECC Centcom Constructors LLC</i> , 913 F.3d 1162 (9th Cir. 2019)	16
<i>B.L. Harbert Int'l, LLC v. Hercules Steel Co.</i> , 441 F.3d 905 (11th Cir. 2006)	22, 24
<i>Ballantine v. Dominican Republic</i> , No. 19-cv-3598 (TJK), 2020 WL 4597159 (D.D.C. Aug. 11, 2020).....	20
<i>Belz v. Morgan Stanley Smith Barney, LLC</i> , No. 3:13-cv-636-J-34 MCR, 2014 WL 897048 (M.D. Fla. Mar. 5, 2014)	20
<i>Benedict v. Amgen USA Inc.</i> , No. 1:19-cv-113, 2019 WL 1597007 (N.D. Ohio Apr. 15, 2019)	21
<i>Bosack v. Soward</i> , 586 F.3d 1096 (9th Cir. 2009)	7, 9, 14, 17
<i>Bradbury v. Nethercutt</i> , 95 Wash. 670 (1917)	10
<i>Brockmeyer v. May</i> , 383 F.3d 798 (9th Cir. 2004)	20
<i>Budinich v. Becton Dickinson and Co.</i> , 486 U.S. 196 (1988)	7
<i>Camarata v. McDonald's Corp.</i> , No. C19-6236JLR, 2021 WL 1893753 (W.D. Wash. May 11, 2021)	19

1	<i>Campbell v. Acuff-Rose Music, Inc.</i> , 510 U.S. 569 (1994)	13, 14
2	<i>Collins v. D.R. Horton, Inc.</i> , 505 F.3d 874 (9th Cir. 2007)	8, 17
3	<i>Comedy Club, Inc. v. Improv West Assocs.</i> , 553 F.3d 1277 (9th Cir. 2009)	7, 8
4	<i>Coutee v. Barrington Capital</i> , 336 F.3d 1128 (9th Cir. 2003)	2, 14, 17
5	<i>Dalla-Longa v. Magnetar Cap. LLC</i> , 33 F.4th 693 (2d Cir. 2022)	21
6	<i>Dreis & Krump Mfg. Co. v. Int'l Ass'n of Machinists & Aerospace Workers, Dist. No. 8</i> , 802 F.2d 247 (7th Cir. 1986)	23
7	<i>Hall Street Assocs., L.L.C. v. Mattel, Inc.</i> , 552 U.S. 576 (2008)	8
8	<i>Hyosung (America) Inc. v. Tranax Techns. Inc.</i> , No. C 10- 0793 VRW, 2010 WL 1853764 (N.D. Cal. May 6, 2010)	6, 7
9	<i>IKON Global Mkts., Inc. v. Appert</i> , No. C11-cv-53RAJ, 2011WL 9687842 (W.D. Wash. July 28, 2011)	20
10	<i>Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.</i> , 341 F.3d 987 (9th Cir. 2003) (en banc)	7, 17
11	<i>Lagstein v. Certain Underwriters at Lloyd's, London</i> , 607 F.3d 634 (9th Cir. 2010)	22
12	<i>Lewis v. Circuit City Stores, Inc.</i> , 500 F.3d 1140 (10th Cir. 2007).....	22
13	<i>Med. Shoppe Int'l Inc. v. Turner Inv.</i> , 614 F.3d 485 (8th Cir. 2010)	8
14	<i>Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Defense Sys., Inc.</i> , 665 F.3d 1091 (9th Cir. 2011)	22
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<i>O'Neal Constructors, LLC v. DRT Am., LLC</i> , 991 F.3d 1376 (11th Cir. 2021).....	21
2	<i>Olson v. Harland Clarke Corp.</i> , No. C11-5585 BHS, 2014 WL 2589453 (W.D. Wash. June 10, 2014), <i>aff'd</i> , 676 F. Appx. 635 (9th Cir. 2017).....	14, 17
3		
4	<i>Oxford Health Plans LLC v. Sutter</i> , 569 U.S. 564 (2013)	<i>passim</i>
5		
6	<i>Pharmangiaga Berhad v. E*HealthLine.com</i> , 344 F.Supp.3d 1136 (E.D. Cal. 2018)	18, 23
7		
8	<i>Protech Minerals, Inc. v. Suzuki</i> , No. 2:20-cv-00969-TSZ, 2020 WL 6939637 (W.D. Wash. Nov. 25, 2020).....	19, 22
9		
10	<i>Purus Plastics GmbH v. Eco-Terr Distrib., Inc.</i> , No. C18-0277, 2018 WL 3064817 (W.D. Wash. June 21, 2018).....	23
11		
12	<i>RSD AAP, LLC v. Alyeska Ocean, Inc.</i> , 190 Wash. App. 305, 314 (2015)	16
13		
14	<i>Shaut v. Hatch</i> , No. 1:18-cv-420, 2018 WL 3559081 (N.D. Ohio July 24, 2018)	21
15		
16	<i>Sea Shipping Inc. v. Half Moon Shipping, LLC</i> , 848 F. Supp. 2d 448 (S.D.N.Y. 2012)	19
17		
18	<i>SSA Terminals v. Machinists Auto. Trades Dist. Lodge No. 190</i> , 244 F. Supp. 2d 1031 (N.D. Cal. 2003).....	23, 24
19		
20	<i>Stevens v. Jiffy Lube Int'l, Inc.</i> , 911 F.3d 1249 (9th Cir. 2018)	20
21		
22	<i>Stolt-Nielsen v. AnimalFeeds Int'l Corp.</i> , 559 U.S. 662 (2010)	8, 23
23		
24	<i>Technologists, Inc. v. MIR's Ltd.</i> , 725 F. Supp. 2d 120 (D.D.C. 2010)	20
25		
	<i>U.S. Life Ins. Co. v. Superior Nat'l Ins. Co.</i> , 591 F.3d 1167 (9th Cir. 2010)	8
	<i>Webster v. A.T. Kearney, Inc.</i> , 507 F.3d 568 (7th Cir. 2007)	20

1 **Statutes**

2 9 U.S.C.	
3 § 10.....	7, 22, 23
3 § 10(a)(4)	7, 8, 17, 22
4 § 12.....	20, 21

5 **Rules**

6 AAA Commercial Arbitration Rules

6 R-43(a).....	21
7 R-43(b).....	21

8 Fed. R. Civ. P.

9 R. 4	20, 21
9 R. 4(f)(3).....	20
10 R. 54(d)(2)(B)	24

I. INTRODUCTION

In November 2019, Seagen Inc. (“Seagen”) filed a Demand for Arbitration against Daiichi Sankyo Company, Limited (“DSC”) alleging breach of contract and seeking to quiet title. Through its claims, Seagen sought to extract from DSC *tens of billions of dollars, plus* worldwide ownership of DSC’s proprietary portfolio of targeted drugs for treating patients suffering from deadly cancers, *plus* global patent rights to more than 350 DSC patents and patent applications. The Parties jointly appointed a former federal judge with over 35 years of experience (as a judge and an arbitrator) handling complex commercial cases, particularly in the areas of intellectual property and pharmaceuticals, to be their arbitrator in the underlying arbitration (“the Arbitrator”). Now that the Arbitrator has found Seagen’s claims against DSC to be both time-barred and substantively meritless, Seagen labels the Arbitrator’s rulings “completely irrational” and asks this Court to disregard the factual findings, credibility determinations, and legal conclusions the Parties entrusted the Arbitrator to make. The only thing that is irrational is Seagen’s effort to prolong the Parties’ dispute with a Petition to Vacate (“the Petition”) that misrepresents the Interim Award’s (“the Award’s”) rulings, makes unfounded scattershot attacks on the Arbitrator’s contractual interpretations, and ignores the binding standard of review that forecloses vacatur of the Arbitrator’s factual and legal findings.

The Arbitrator conducted two extensive evidentiary hearings, carefully considered Seagen’s arguments, and denied Seagen’s claims against DSC on three independent grounds. With respect to the first ground (statute of limitations), Seagen contends that the Arbitrator manifestly disregarded the law as to Seagen’s quiet title claim. Seagen argues that the Arbitrator held there is no statute of limitations for quiet title actions under Washington law, but then applied one anyway. Seagen fundamentally misrepresents the Award. In reality, the Award states that “[a]s a general matter,” Washington law does not appear to set a time limit on quiet title actions—but then explains in the very next sentence that “*persuasive authority*” under Washington law

1 establishes that the applicable limitations period is “determined by examining the ‘gravamen’ of
 2 the underlying cause of action.” Award at 36 (emphasis added). The Arbitrator further explained,
 3 as a matter of Washington law, that because the gravamen of Seagen’s quiet title claim was
 4 “quintessentially contractual,” it was governed by Washington’s six-year statute of limitations for
 5 breach of contract actions. Award at 37-38. Specifically, the Arbitrator found the right to the
 6 property to which Seagen sought quiet title was governed by the Parties’ Collaboration Agreement
 7 (“the Agreement”). *See* Award at 36-37.

8 With respect to the Award’s second independent ground, Seagen misleadingly contends
 9 that the Arbitrator ignored two subsections of the Parties’ contract when he analyzed whether
 10 DSC’s technology related to “Drug Conjugation Technology”—an essential requirement for any
 11 assignment to Seagen under Section 3.3.1 of the Agreement. But the Award itself demonstrates
 12 that the Arbitrator considered the entirety of Section 1.1.17, as well as the related Section 1.1.32
 13 (containing the predicate requirement for assignment), together with the Parties’ voluminous
 14 evidence regarding construction of those provisions. *See* Award at 39-41 & n.10. The Arbitrator’s
 15 interpretation of Section 1.1.17 reflects his full consideration of the relevant contractual language
 16 and the evidence. Seagen ignores well-settled precedent that on judicial review, the sole question
 17 is whether “the arbitrator (even arguably) interpreted the parties’ contract, not whether he got its
 18 meaning right or wrong.” *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 (2013).

19 With respect to the third ground, Seagen completely ignores the Award’s express factual
 20 finding that DSC’s technology was not an “Improvement” under the Agreement because DSC’s
 21 technology did not ““utilize, incorporate, derive directly from, directly relate to, … made using
 22 or … based directly on the SGI Technology,”” Award at 45 n.12, and DSC’s technology thus *was*
 23 *not subject to any assignment to Seagen*. That finding was based on the Arbitrator’s assessment
 24 of extensive competing documentary and expert evidence, which a court has “no authority to re-
 25 weigh.” *Coutee v. Barrington Capital*, 336 F.3d 1128, 1134 (9th Cir. 2003). Seagen’s failure to

1 even mention this independent and dispositive finding—which rejects the very predicate for
 2 Seagen’s claim that DSC’s technology was assignable to Seagen—further illustrates that Seagen’s
 3 Petition is meritless and was brought in bad faith.

4 Finally, Seagen’s Petition should be dismissed as untimely for failure to serve DSC within
 5 the required statutory period. The requirements for service of vacatur petitions are strictly
 6 construed in this District, and this defect cannot be cured after the fact. Seagen’s Petition should
 7 be denied with an award of costs and attorneys’ fees to DSC for defending against a time-barred
 8 Petition that ignores well-established Supreme Court and Ninth Circuit law.

9 II. RELEVANT BACKGROUND

10 A. Seagen’s Wrongful Attempt to Misappropriate DSC’s Technology

11 The underlying Arbitration stems from Seagen’s wrongful attempt to misappropriate
 12 DSC’s ground-breaking antibody-drug conjugate (“ADC”) technology, including DSC’s drug
 13 Enhertu®, which is clinically-approved to treat patients suffering from breast, lung, and stomach
 14 cancers. DSC independently invented Enhertu® (also known as “DS-8201”) and it “utilizes the
 15 proprietary camptothecin DX-8951, which results in the active payload [DXd] by virtue of the
 16 non-traceless linker.” Award at 40-41; *see also* Award at 43. In support of its scheme to
 17 misappropriate DSC’s technology, Seagen relied on an old, expired Agreement between the Parties
 18 regarding drug research that failed and involved entirely different ADC technology—Seagen’s
 19 “auristatin-based payload with a traceless linker.” Award at 42.

20 Notably, Seagen openly acknowledged the novelty of DSC’s ADC discoveries for years
 21 and sought a partnership with DSC. For example, in December 2015, DSC presented its “ground-
 22 breaking” ADC technology at a public conference (attended by Seagen), which created
 23 “immediate industry interest.” Award at 43-44. Seagen’s response was to seek a partnership
 24 with DSC in January 2016, and again in 2018. When DSC declined Seagen’s invitation, Seagen’s
 25 interest in DSC’s technology went far beyond its solicitations to DSC. Recognizing that DS-8201

1 “may change the playing field pretty quickly,” Seagen “undertook an in-depth analysis of DS-
 2 8201 not later than March, 2017” in an attempt to develop its own camptothecin-based ADC
 3 technology. Award at 44. At no point during its analysis did Seagen “suggest[]—and far less
 4 clearly express[]—that DSC’s ADC technology was plausibly related to or arose from Seagen’s
 5 ADC technology, either generally or with respect to the Collaboration Agreement.” Award at 44.

6 In late August 2019, for the first time, Seagen claimed that DSC’s technology was actually
 7 Seagen’s own. Seagen made that claim not long after DSC announced a multi-billion dollar deal
 8 for Enhertu® with a different pharmaceutical company—a “coincidence” the Arbitrator considered
 9 “conspicuous.” Award at 35 n.8.

10 **B. Selection of the Arbitrator, the Arbitral Hearing, and the Award**

11 On November 12, 2019, Seagen filed a Demand for Arbitration. *See* Dkt. 12, Ex. 2. Seagen
 12 alleged breach of contract and quiet title claims against DSC.¹ Section 19.3.4 of the Agreement
 13 provides that “[i]f the issues in dispute involve scientific, technical or commercial matters” (as this
 14 dispute does), “any arbitrator chosen hereunder shall have educational training and/or industry
 15 experience sufficient to demonstrate a reasonable level of relevant scientific, medical and industry
 16 knowledge.” Dkt. 12, Ex. 1 at 32. The Parties jointly appointed Garrett E. Brown, Jr., the former
 17 Chief Judge of the United States District Court for the District of New Jersey, as their Arbitrator.²

18 The Arbitration spanned over two years, and included extensive discovery, multiple rounds
 19 of briefing, two separate live hearings totaling 10 days,³ live testimony from 14 fact witnesses and
 20 10 experts, and hundreds of documentary exhibits. On August 12, 2022, the Arbitrator issued an
 21 Award that was “fully and finally dispositive with respect to all factual issues, legal and equitable

22 ¹ After DSC challenged Seagen’s demand as insufficiently specific, on June 24, 2020, Seagen filed an Amended
 23 Demand. *See* Dkt. 12, Ex. 3. Seagen’s Amended Demand contained the same two claims against DSC.

24 ² The Arbitrator’s publicly-available curriculum vitae is attached as Ex. 1.

25 ³ At Seagen’s request, made less than a month before the Arbitrator was expected to render the Award, the Arbitrator
 agreed to reopen the hearing to consider what Seagen claimed was new evidence. *See* Award, Ex. B. The Arbitrator
 also held several preliminary and procedural hearings, including on arbitrability. *See* Award, Ex. A.

1 arguments, and defenses raised in conjunction with the Parties' claims and requests for relief, with
 2 the sole exception of the Parties' respective requests for an award of, *inter alia*, attorneys' fees."
 3 Award at 20; *see also* Award at 45.

4 The Arbitrator found that the applicable Washington six-year statute of limitations barred
 5 Seagen's breach of contract claim, Award at 22-29, and rejected Seagen's contrary arguments,
 6 including defenses of equitable tolling, equitable estoppel, and fraudulent concealment, Award at
 7 30-36.⁴

8 Turning to Seagen's quiet title claim, the Arbitrator stated that, "[a]s a general matter,"
 9 Washington law did not set a time limit on quiet title actions. Award at 36. In the very *next*
 10 sentence, the Arbitrator stated: "*However*, ... persuasive authority establishes that under
 11 Washington State law, the applicable statute of limitations—or the lack thereof—is determined by
 12 examining the 'gravamen' of the underlying cause of action. Indeed, under Washington State law,
 13 '[t]he gravamen of the claim determines the applicable statute of limitations.'" Award at 36-37
 14 (quoting *Aberdeen Fed. Sav. & Loan Ass'n v. Hanson*, 58 Wash. App. 773, 776 (1990), and citing
 15 *Bradbury v. Nethercutt*, 95 Wash. 670, 672 (1917)) (emphasis added) (additional citation omitted).
 16 Applying those principles, the Arbitrator was "clearly convinced that on the face of Seagen's
 17 Amended Demand, the 'gravamen' of its Quiet Title Claim is ... the very same allegation that is
 18 the primary thrust of Seagen's subsequently-plead Breach of Contract Claim." Award at 37.
 19 Finding that "the gravamen" of Seagen's quiet title claim "is quintessentially contractual," the
 20 Arbitrator held that Seagen's quiet title claim was similarly time-barred. Award at 37-38.

21 Although the time-bar finding was independently dispositive, *see* Award at 38-39, 45, the
 22 Arbitrator *also* addressed—and rejected—Seagen's claims on the merits. Award at 39. DSC's
 23 technology was subject to assignment to Seagen *only if* it met two requirements: first, it must be
 24 an "*Improvement*" and second, it must be an "*Improvement* that relates to the *Drug Conjugation*

25 ⁴ Seagen's Petition does not challenge the Arbitrator's rejection of its breach of contract claim. Dkt. 11 at 1 n.1.

Technology,” as defined in Sections 1.1.32, 1.1.17, and 3.3.1 of the Agreement. Award at 40; *see also* Dkt. 11 at 5. After examining these contractual provisions, pertinent Washington law, and the record evidence, the Arbitrator found as to the second requirement for assignment that “the most reasonable meaning” of Section 1.1.17, which defines “Drug Conjugation Technology,” is that the scope of that definition was limited “to the actual boundaries of Seagen’s ADC technology that is the subject of the Collaboration Agreement.” Award at 41-44. The Arbitrator specifically noted that DSC and Seagen “commonsensically intended to tether the scope of the term ‘Drug Conjugation Technology’ to the type of ADC technology that Seagen actually possessed,” and that “it defies credulity to suggest that DSC—a sophisticated international pharmaceutical conglomerate—would intentionally agree to assign Seagen ‘any right, title and interest’ in a potential future drug that utilizes DX-8951, a proprietary cytotoxin that it had already developed at the time the Collaboration Agreement was executed.” Award at 43.

“[F]or completeness,” the Arbitrator also ruled that DSC’s technology did not meet the first contractual requirement for assignment to Seagen—it did not “meet the definition” of “Improvements” under Section 1.1.32 because DSC’s technology “d[id] not ‘utilize, incorporate, derive directly from, directly relate to, [was] made using or [was] based directly on the SGI Technology.’” Award at 45 n.12. That holding was based on the assessment of the same expert and documentary evidence underpinning his finding that DSC’s technology was not assignable to Seagen because it did not “relate[] to Drug Conjugation Technology.” Award at 43-45.

III. JURISDICTION

Although the Award is labeled “Interim Award,” the Arbitrator expressly stated that the Award was “fully and finally dispositive with respect to all factual issues, legal and equitable arguments, and defenses raised in conjunction with the Parties’ claims and request for relief,” with the sole exception of requests for costs and attorneys’ fees. Award at 20; *see also* Award at 45.

A court may review an award that “finally and conclusively dispose[s] of a separate and independent claim.” *Hyosung (America) Inc. v. Tranax Techns. Inc.*, No. C 10- 0793 VRW, 2010 WL 1853764, at *2 (N.D. Cal. May 6, 2010) (internal quotation marks and citation omitted); *see also* Dkt. 11 at 10-11 (Seagen acknowledging that the Award is final as to all its claims). Because the Award “is fully and finally dispositive” as to all of Seagen’s claims, Award at 20, and “the arbitrator’s determination of attorney fees is easily severable and distinct,” the Award has the requisite finality for the purposes of judicial review. *Hyosung*, 2010 WL 1853764, at *5; *cf. Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 200-03 (1988) (attorneys’ fees determination is collateral to a merits decision for purposes of appellate review).

IV. ARGUMENT

A. Legal Standard

Section 10(a)(4) of the Federal Arbitration Act (“the FAA”) authorizes federal courts to vacate an arbitral award only if the tribunal “exceeded their powers.” 9 U.S.C. § 10. A party challenging an award bears the burden of proof, and a court is “prohibited” from “review[ing] an arbitral] panel’s factual findings and legal conclusions.” *Bosack v. Soward*, 586 F.3d 1096, 1104 (9th Cir. 2009). “It is not enough … to show that the [arbitrator] committed an error—or even a serious error … the sole question [under Section 10(a)(4)] is whether the arbitrator (even arguably) interpreted the parties’ contract, not whether he got its meaning right or wrong.” *Oxford Health*, 569 U.S. at 569. “Whether or not [an arbitrator’s] findings are supported by the evidence in the record is beyond the scope of [court] review.” *Bosack*, 586 F.3d at 1104-05. “Neither erroneous legal conclusions nor unsubstantiated factual findings justify federal court review of an arbitral award under the [FAA] statute.” *Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 994 (9th Cir. 2003) (en banc).

The Ninth Circuit has held that vacatur under 9 U.S.C. § 10(a)(4) may be warranted where the award is “completely irrational or exhibits a manifest disregard for the law.” *Kyocera*, 341

1 F.3d at 998. “[T]he ‘completely irrational’ standard is extremely narrow and is satisfied only
 2 where the arbitration decision fails to draw its essence from the agreement.” *Comedy Club, Inc.*
 3 v. *Improv West Assocs.*, 553 F.3d 1277, 1288 (9th Cir. 2009) (internal quotation marks, alteration,
 4 and citation omitted). An arbitrator’s “plausible interpretation” of the contract does not meet this
 5 standard. *U.S. Life Ins. Co. v. Superior Nat'l Ins. Co.*, 591 F.3d 1167, 1177 (9th Cir. 2010). The
 6 “manifest disregard of the law” standard requires “something beyond and different from a mere
 7 error in the law or failure on the part of the arbitrators to understand and apply the law.” *Collins*
 8 v. *D.R. Horton, Inc.*, 505 F.3d 874, 879 (9th Cir. 2007). Rather, “the moving party must show that
 9 the arbitrator understood and correctly stated the law, but proceeded to disregard the same.” *Id.*
 10 (internal quotation marks, alterations, and citation omitted).

11 The Ninth Circuit has reaffirmed the “manifest disregard” and “complete irrationality”
 12 doctrines in the wake of the Supreme Court’s decision in *Hall Street Associates, L.L.C. v. Mattel,*
 13 Inc., 552 U.S. 576 (2008), *see Comedy Club*, 553 F.3d at 1290, but other courts have concluded
 14 (correctly) that *Hall Street* abrogated these doctrines, *see, e.g., Med. Shoppe Int'l Inc. v. Turner*
 15 *Inv.*, 614 F.3d 485, 489 (8th Cir. 2010); *Affymax, Inc. v. Ortho-McNeil-Janssen Pharms, Inc.*, 660
 16 F. 3d 281, 285 (7th Cir. 2011). The Supreme Court has not yet resolved the question. *See Stolt-*
 17 *Nielsen v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 672 n.3 (2010). To the extent the Supreme
 18 Court finds these doctrines to be inconsistent with the statutory requirements of Section 10(a)(4),
 19 DSC would argue the statutory provisions must control. The Award is not subject to vacatur under
 20 any standard.

21 **B. Seagen’s Petition to Vacate Should Be Denied As Meritless**

22 **1. Seagen Misrepresents the Award’s Rulings Regarding**
 23 **Application of a Statute of Limitations to Seagen’s Quiet Title Claim**

24 Seagen selectively quotes the Award to create an impression the Arbitrator concluded that
 25 Washington law contained no statute of limitations for quiet title claims, but applied one anyway.

1 Dkt. 11 at 21 (“[t]he Award acknowledged that Washington law has no statute of limitations for
 2 quiet title claims”) (citing Award at 36). A plain reading of the Award—and of the sentences
 3 following Seagen’s cropped quotation—demonstrates that the Arbitrator did no such thing:

4 As a general matter, Seagen appears to be correct. *However*, as DSC correctly notes
 5 in its Post-hearing Brief, persuasive authority establishes that under Washington
 6 State law, the applicable statute of limitations – or the lack thereof – is determined
 7 by examining the “gravamen” of the underlying cause of action. Indeed, under
 Washington State law, “the gravamen of the claim determines the applicable statute
 of limitations.”

8 Award at 36-37 (quoting *Aberdeen*, 58 Wash. App. at 776, and citing *Bradbury*, 95 Wash. at 672)
 9 (additional citation omitted) (emphasis added). As the Award shows, the Arbitrator reviewed
 10 applicable Washington law, and found that, under Washington law, the applicable limitations
 11 period is “determined by examining the ‘gravamen’ of the underlying cause of action.” Award
 12 at 36. As the Award further explained, because the gravamen of Seagen’s quiet title claim was
 13 “quintessentially contractual,” it was governed by Washington’s six-year statute of limitations for
 14 breach of contract actions. Award at 37-38. The Arbitrator then applied that statute of limitations
 15 to bar Seagen’s stale quiet title claim. Award at 37-38.

16 As Seagen acknowledges, an award exhibits “manifest disregard of the law” only if ““the
 17 arbitrator[] recognized the applicable law and then ignored it.”” Dkt. 11 at 21 (quoting *Comedy*
 18 *Club*, 553 F.3d at 1290). Seagen does not dispute that the Arbitrator “recognized” the law, *i.e.*,
 19 that under Washington law, the statute of limitations applicable to a claim is determined by
 20 examining the “gravamen” of the underlying cause of action. *See* Award at 36-37 (citation
 21 omitted). Nor does Seagen argue that the Arbitrator “ignored” this applicable law. At most,
 22 Seagen urges that its claim is “a quintessential quiet title claim,” Dkt. 11 at 22, and not—as the
 23 Arbitrator held—a “quintessentially contractual” claim. Award at 36-37 (“Seagen’s Quiet Title
 24 Claim solely arises from Section 3.3.1 of the Collaboration Agreement.”). But this conclusion,
 25 which the Arbitrator made after analyzing the contractual provisions and Seagen’s Amended

1 Demand, *see* Award at 37-38, is one that a court cannot disturb. *See Bosack*, 586 F.3d at 1104 (a
 2 court is “prohibited” from “review[ing an arbitral] panel’s factual findings and legal conclusions”).

3 The crux of Seagen’s argument is its assertion that under Washington law there is no statute
 4 of limitations for quiet title claims. Dkt. 11 at 21. But the Arbitrator expressly rejected that
 5 argument. *See* Award at 37 (quoting *Aberdeen*, 58 Wash. App. at 776, and citing *Bradbury*, 95
 6 Wash. at 672). Seagen ignores the authority the Arbitrator relied on and instead cites several
 7 Washington appellate court decisions and an unreported order by another court in this District for
 8 the proposition that the existence of a contract relating to the property at issue does not change the
 9 nature of a quiet title claim. Dkt. 11 at 22. But these decisions cannot countermand the
 10 Washington Supreme Court ruling on which the Arbitrator based his legal conclusion, especially
 11 where the contract governs the very existence of the underlying property right. And even if
 12 subsequent case law cast some doubt on whether *Bradbury* remains controlling authority, it was
 13 the Arbitrator’s purview to determine the applicable state law. That is exactly what the
 14 Arbitrator—an experienced former federal judge familiar with the task of ascertaining applicable
 15 state law—did here. Tellingly, Seagen ignores the Arbitrator’s separate analysis that rejects
 16 Seagen’s “alternate assertion … that federal law forecloses application of Washington State’s
 17 statute of limitations” to Seagen’s causes of action. Award at 38 n.9. The Arbitrator’s analysis
 18 plainly shows he determined under Washington law that a statute of limitations applies to Seagen’s
 19 quiet title claim. Seagen misleads when it tells this Court otherwise.

20 Seagen argues that the Arbitrator’s interpretation of Section 3.3.1 “fails to draw its essence
 21 from the agreement.” Dkt. 11 at 22 (quoting *Aspic Engineering v. ECC Centcom Constructors*
 22 *LLC*, 913 F.3d 1162, 1166 (9th Cir. 2019)). Seagen accuses the Arbitrator of “disregarding” the
 23 “hereby assigns” language in Section 3.3.1. Dkt. 11 at 23. In reality, the Arbitrator *specifically*
 24 *considered* the “hereby assigns” language of that section of the contract. *See* Award at 27. The
 25 Arbitrator did not “disregard” contractual language he considered earlier in the Award; rather, he

1 ruled against Seagen’s argument based on that language. The Award expressly finds that Seagen
 2 *does not* own DSC’s technology, *see* Award at 45; consequently, there was no property for DSC
 3 to “hereby assign” in the first place.

4 Seagen also argues that the Arbitrator’s April 2021 order renders the Award “completely
 5 irrational” because the Arbitrator’s acceptance of the statute of limitations defense in the Award
 6 somehow constitutes a “reversal” from that prior order. Dkt. 11 at 24. But the April 2021 order
 7 denied DSC’s *request to file* a dispositive motion on the statute of limitations. The Arbitrator’s
 8 ruling was without prejudice to DSC making the same arguments in the course of the arbitral
 9 hearing; indeed, the Arbitrator expressly “reserve[d] decision” on that issue “pending development
 10 of the evidentiary record in conjunction with the Arbitration Hearing.” Dkt. 13, Ex. 11 at 2. Under
 11 Seagen’s contorted logic, a federal court that refuses to grant leave to file a potentially dispositive
 12 motion because the court deems the issue better suited for decision at trial behaves “completely
 13 irrationally” if the court later accepts the same argument at a bench trial or on post-trial motions.

14 **2. Seagen Impermissibly Asks the Court to Disregard
 15 the Arbitrator’s Factual Findings and Legal Conclusions**

16 The Arbitrator found that Seagen’s quiet title claim also fails on the merits. Section 3.3.1
 17 of the Agreement provides that Seagen may only be assigned technology that constitutes an
 18 “Improvement that relates to the Drug Conjugation Technology.” Award at 22. Any DSC
 19 technology that falls outside of those contractual parameters is not assignable to Seagen. Based
 20 on the entirety of the evidence that the Parties presented, the Arbitrator found DSC’s technology
 21 is not subject to assignment to Seagen. The Award explained:

22 *For these reasons*, the Arbitrator concludes that DS-8201 does not meet the
 23 definition of “Drug Conjugation Technology” under Section 1.1.17 of the
 24 Collaboration Agreement. Because it does not, the Arbitrator concludes that
 25 Seagen has failed to carry its burden of providing that the so-called “Improvement
 IP” reflects an “Improvement that relates to the Drug Conjugation Technology”
 under Section 3.1.1. of the Collaboration Agreement.

1 Award at 45 (emphasis added). Seagen is not entitled to quiet title on property to which it has no
 2 rights.

3 Disregarding well-established law, *see supra* Section IV.A, Seagen launches a series of
 4 scattershot attacks seeking to overturn the Award’s factual findings and legal conclusions. Seagen
 5 argues the Arbitrator’s finding that DSC’s technology is not “relate[d] to Drug Conjugation
 6 Technology” disregarded the Agreement’s “express language” and ignored two subsections of
 7 Section 1.1.17. Dkt. 11 at 13-15. Seagen’s argument rests upon the groundless assertion that the
 8 Arbitrator incorrectly interpreted the term “an Improvement that relates to Drug Conjugation
 9 Technology” and impermissibly invites this Court to re-weigh evidence Seagen presented to the
 10 Arbitrator that he already correctly rejected. Seagen is not entitled to a “do-over” merely because
 11 it disagrees with the Arbitrator’s interpretation and application of contested contract language.

12 Seagen contends that the Arbitrator “simply ignores subpart (c)” and “disregards
 13 subpart (b)” of the Drug Conjugation Technology definition. Dkt. 11 at 13-15. In truth, the
 14 Arbitrator initiated his analysis by carefully considering the definitional provision *in its entirety*.
 15 He began by quoting the entire contractual definition of this term:

16 **“Drug Conjugation Technology”** means (a) cytotoxins or cytostatic compounds
 17 such as monomethyl Auristatin E and monomethyl Auristatin F and certain
 18 variants, derivatives, analogues and salts thereof, and methods of making and using
 19 such cytotoxic or cytostatic compounds (b) compositions and methods useful for
 20 attaching the foregoing cytotoxic or cytostatic compounds to antibodies and (c) any
 21 related assays and methods SGI provides to Licensee pursuant to the Research
 22 Program.

23 Award at 23 (quoting Dkt. 12, Ex. 1, § 1.1.17); *see also* Award at 40 (quoting the same definition
 24 and explaining that the Award considered the term as “*defined*”) (emphasis added). Contrary to
 25 Seagen’s assertion, the Arbitrator did not “ignore” or “disregard” any subpart of the Drug
 Conjugation Technology definition; in fact, he considered the entire contractual provision in light
 of the entirety of the evidence that the Parties presented to him. Award at 39-44 (citing record and

1 cases). As Seagen effectively admits, its arguments boil down to mere disagreement with the
 2 Arbitrator's *interpretation* of the entire provision. *See* Dkt. 11 at 11 ("The Award also finds as a
 3 matter of contract interpretation that DSC's parallel ADC program did not reflect an 'Improvement
 4 that relates to the Drug Conjugation Technology.'"). Again, this is not a basis for vacatur. *Oxford*
 5 *Health*, 569 U.S. at 569 ("[A]n arbitral decision 'even arguably construing or applying the
 6 contract' must stand, regardless of a court's view of its (de)merits.") (citation omitted).

7 While the Award delves into a deeper discussion of certain aspects of the definition,
 8 including language used in subsection (a), this analysis reflects the attention necessary for the
 9 construction of the contractual term at issue, not any "disregard" of the definition's other
 10 subsections. As the text of section 1.1.17 of the Agreement makes plain, subsection (a) is the
 11 predicate section for subsections (b) and (c). Subsection (b) references "the foregoing cytotoxic
 12 or cytostatic compounds" of subsection (a), and subsection (c) likewise references "related" assays
 13 and methods. *See* Award at 23, 40. Accordingly, the Award's analysis of the relevant scope of
 14 Drug Conjugation Technology, and the specific contractual language and technology extensively
 15 addressed and contested by the Parties and their experts, is applicable to all subparts of that term's
 16 definition. *See* Award at 40-41 (discussing evidence from DSC's expert Dr. King regarding DSC's
 17 unique linker, which is different from those used in Seagen's auristatin-based technology); *see*
 18 also Award at 44 & n.11 (crediting testimony from DSC's expert Dr. Lambert on the technology
 19 as a whole).

20 Seagen's other attacks on the Arbitrator's interpretation of the term "Drug Conjugation
 21 Technology" are equally meritless. *First*, Seagen complains that its dictionary evidence and cited
 22 precedent should have resulted in a different conclusion. Dkt. 11 at 15. But, as the Award makes
 23 plain, the Arbitrator weighed Seagen's proffered evidence and rejected Seagen's argument in a
 24 finding that was entirely in line with both Supreme Court and Washington law. *See* Award at 20;
 25 Award at 42 (discussing *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 577 (1994)). The

1 Arbitrator explained that the listed cytotoxins “*exemplified*” the scope of the contractual term.
 2 Award at 43 (emphasis added); *see also Campbell*, 510 U.S. at 577 (a term “such as”
 3 “indicate[s] … illustrative … examples”) (internal quotation marks omitted).

4 *Second*, Seagen confusingly asserts that the Award’s contract interpretation renders
 5 superfluous the reference to “cytostatic” in the term “Drug Conjugation Technology.” Dkt. 11
 6 at 15. But the Arbitrator’s holding was premised on an interpretation supported by the expert
 7 reports and testimony of DSC’s experts, Drs. John M. Lambert and H. Dalton King. Award at 41.
 8 As DSC and its experts explained, and as the Arbitrator observed, Seagen’s proposed interpretation
 9 would have rendered the clause as a whole substantively meaningless, and therefore superfluous.
 10 Award at 42-43. Seagen’s arguments constitute an impermissible attack on the Arbitrator’s factual
 11 findings. *Coutee*, 336 F.3d at 1134; *Bosack*, 586 F.3d at 1104.

12 *Third*, Seagen asserts that the Arbitrator’s interpretation “failed to address the significant
 13 negotiation history evidence” between the parties. Dkt. 11 at 16. That, again, is incorrect. The
 14 Arbitrator weighed *all* the evidence, including the Parties’ negotiation history, to construe the term
 15 “such as” in the most objectively reasonable manner. *See* Award at 41 n.10 (explaining that the
 16 Arbitrator made his findings “in the context of the entire (voluminous) evidentiary record”
 17 developed in the Arbitration); Award at 20 (explaining that the Award “concisely recites only those
 18 facts and discusses only those legal arguments that the Arbitrator considers necessary to establish
 19 the basis for resolution”). Courts routinely reject arguments that an arbitrator failed to consider
 20 relevant evidence where the arbitrator assured that “his opinion was ‘[b]ased on the evidence
 21 presented during the arbitration hearings.’” *Olson v. Harland Clarke Corp.*, No. C11-5585 BHS,
 22 2014 WL 2589453, at *2 (W.D. Wash. June 10, 2014), *aff’d*, 676 F. Appx. 635 (9th Cir. 2017).
 23 Moreover, the record evidence clearly discussed the Parties’ views regarding the negotiation
 24 history; the very exhibits that Seagen submitted alongside its Petition reflect that discussion. *See*,
 25 *e.g.*, Dkt. 12, Ex. 9 at 26.

1 Based on his examination of Washington law of contract interpretation, the Arbitrator was
 2 “persuaded that the most reasonable meaning of the term ‘such as’ in the defined term ‘Drug
 3 Conjugation Technology’ is to limit the scope of the definition to the actual boundaries of Seagen’s
 4 ADC technology that is the subject of the Collaboration Agreement.” Award at 42-43. There is
 5 nothing “irrational” about this conclusion, nor does it exhibit a “manifest disregard of the law.”
 6 To the contrary, as the Arbitrator stated, this contractual interpretation

7 comports with Washington State law in at least three critical respects: (1) it
 8 effectuates the objective manifestation theory of contract interpretation; (2) it
 9 favors an interpretation that gives substantive effect to the “such as” clause, versus
 10 Seagen’s proposed interpretation that would render that clause substantively
 11 meaningless, and therefore superfluous; and (3) it favors DSC’s more objectively
 12 reasonable interpretation of the “such as” clause – namely, that the Parties
 13 commonsensically intended to tether the scope of the term “Drug Conjugation
 14 Technology” to the type of ADC technology that Seagen actually possessed.

15 Award at 43.

16 Seagen’s argument that the Award is completely irrational and exhibits manifest disregard
 17 of the law because the Arbitrator purportedly allowed his “views about reasonableness to trump
 18 the plain terms of the Collaboration Agreement” (Dkt. 11 at 16-21) lacks merit. Seagen asserts
 19 that “[t]he Arbitrator decided what was ‘commonsensically intended’ and commercially
 20 reasonable and used that to drive the determination of the scope of ‘Drug Conjugation
 21 Technology,’ over the express words of the Collaboration Agreement.” Dkt. 11 at 16. Seagen’s
 22 claim is another impermissible invitation for this Court to second-guess the Arbitrator’s weighing
 23 of the evidence.

24 The Arbitrator accorded more weight to DSC’s evidence and interpretation than to
 25 Seagen’s because “it defies credulity to suggest that DSC—a sophisticated international
 pharmaceutical company—would intentionally agree to assign Seagen ‘any right, title and interest’
 in a potential future drug that utilizes DX-8951, a proprietary cytotoxin that it had already

1 developed at the time the Collaboration Agreement was executed.” Award at 43. The Arbitrator
 2 reached this factual conclusion after careful consideration of both Parties’ extensive evidence,
 3 including expert testimony. *See* Award at 40-44. There is no basis to support Seagen’s cynical
 4 assertion that the Arbitrator “worked backwards” to impose his preferred contract interpretation
 5 and disregarded relevant evidence. Dkt. 11 at 17.

6 Seagen’s reliance on *Aspic* (*see* Dkt. 11 at 17, 22) is unavailing. In *Aspic*, the arbitrator
 7 held that requiring a party to meet certain “strict” provisions of a contract incorporating
 8 governmental regulations would result in “unfairness.” 913 F.3d at 1166-68. To prevent what he
 9 deemed to be an unfair result, the arbitrator in that case “disregarded specific provisions of the
 10 plain text” of the contracts and issued an award that directly conflicted with the contracts’
 11 governmental regulation-related provisions. *Id.* The Arbitrator here did nothing of the sort. He
 12 made no mention of “fairness,” and carefully analyzed each of the dispositive contractual
 13 provisions at issue in this Arbitration, much less failed to give weight to applicable governmental
 14 regulations, as was the case in *Aspic*. Award at 40-45. “[T]he courts have no business overruling
 15 [the arbitrator] because their interpretation of the contract is different from his. The arbitrator’s
 16 construction holds, however good, bad, or ugly.” *Oxford Health*, 569 U.S. at 573 (internal
 17 quotation marks and citation omitted).⁵

18 Seagen’s argument that the Arbitrator “misapplie[d] Washington State law” in reaching his
 19 conclusion is likewise meritless. Dkt. 11 at 18. The Arbitrator expressly recognized that
 20 Washington law adopts “the ‘objective manifestation’ theory of contract interpretation focusing
 21 on the reasonable meaning of the contract language to determine the parties’ intent.” Award at 42
 22 (quoting *RSD AAP, LLC v. Alyeska Ocean, Inc.*, 190 Wash. App. 305, 314 (2015)). The Arbitrator
 23 then applied this law to confirm that his construction of “Drug Conjugation Technology”

24
 25 ⁵ Indeed, Seagen concedes that the Arbitrator “interpreted” the Agreement. Dkt. 11 at 17. Seagen merely argues that
 the Award’s “contract interpretation” was incorrect. But that is not a permissible ground for vacatur.

1 “effectuates the objective manifestation theory of contract interpretation.” Award at 43-44. In
 2 any event, “mere error in law” is not a basis to vacate an arbitral award under Section 10(a)(4).
 3 *Collins*, 505 F.3d at 879-80. The “manifest disregard of the law” doctrine requires that the
 4 Arbitrator “recognized the applicable law and then ignored it.” *Id.* at 879.

5 The Arbitrator found that DSC’s technology does not meet the definition of “Drug
 6 Conjugation Technology” based on his evaluation of (among other things) the Rebuttal Expert
 7 Report of Dr. H. Dalton King, the testimony of Dr. Carolyn Bertozzi, the Opening Expert Report
 8 and testimony of Dr. John M. Lambert, and documentary evidence. *See* Award at 40-44. The
 9 Award states that the findings were made “in the context of the entire (voluminous) evidentiary
 10 record developed in conjunction with the Arbitration Hearing and the Reopened Arbitration
 11 Hearing,” Award at 41 n.10, and that the Arbitrator “accorded greater weight” to DSC’s expert
 12 witness (Dr. Lambert) over Seagen’s witnesses, Award at 44 n.11. These reasons foreclose
 13 vacatur. *See Bosack*, 586 F.3d at 1105; *Kyocera*, 341 F.3d at 994; *Coutee*, 336 F.3d at 1134.

14 Seagen complains that the Arbitrator did not discuss certain evidence that it adduced in its
 15 failed effort to prove liability. Dkt. 11 at 11. The Arbitrator was not obligated to specifically
 16 address each and every item of evidence Seagen raised during the two-year Arbitration. *See Olson*,
 17 2014 WL 2589453, at *2. Seagen’s argument rings hollow in view of the Arbitrator’s precise
 18 explanation that, for reasons of “efficiency and economy,” he “recite[d] only those facts and
 19 discusse[d] only those legal arguments … necessary to establish the basis for resolution of the
 20 Parties’ claims, defenses, and requests for relief.” Award at 20. Whether DSC’s technology meets
 21 the definition of “Drug Conjugation Technology” and thus constitutes “an Improvement that
 22 relates to the Drug Conjugation Technology” was “strongly contested” throughout the Arbitration.
 23 Award at 41 n.10 (emphasis added). Resolving this issue required the Arbitrator to make
 24 credibility determinations and to weigh evidence—findings that a court is prohibited from second-
 25 guessing on judicial review. *Bosack*, 586 F.3d at 1105.

1 In sum, Seagen’s argument centers on the claim that the Arbitrator got it wrong, and a
 2 misrepresentation of the Arbitrator’s factual findings and legal conclusions. This is a bad-faith
 3 attempt to re-litigate a “strongly contested” Arbitration. *See Award at 41 n.10; Pharmangiaga*
 4 *Berhad v. E*HealthLine.com*, 344 F.Supp.3d 1136, 1146 (E.D. Cal. 2018) (awarding fees incurred
 5 in enforcing an award where the “principal arguments” for vacatur were “disputes with the
 6 [arbitrator’s] credibility determinations and weighing of the evidence”).

7 **3. Seagen Fails to Acknowledge the Arbitrator’s Factual Finding
 8 that DSC’s Technology Does Not Even Meet the First Eligibility
 Criterion for Assignable Technology Under the Parties’ Agreement**

9 Seagen fails to acknowledge that DSC’s technology is not assignable to Seagen because
 10 the Arbitrator made the factual finding that DSC’s technology does not meet the first requirement
 11 to be assignable—*i.e.*, it is not an “Improvement” under the Agreement. *See Award at 45 n.12.*
 12 Seagen’s quiet title claim therefore also fails for this independent reason, as Seagen is not entitled
 13 to property to which it has no rights. Seagen’s silence on the Arbitrator’s separate and
 14 independently-dispositive finding, in which he expressly rejected a necessary factual threshold for
 15 Seagen’s claims, further shows that Seagen filed its Petition in bad faith.

16 As discussed above (and as the Award explains), Section 3.3.1 of the Agreement states that
 17 Seagen may only be assigned technology that is an “Improvement that relates to the Drug
 18 Conjugation Technology.” Award at 22. The threshold requirement for that assignment—an
 19 “Improvement”—is defined in Section 1.1.32:

20 **“Improvements”** means all patentable or non-patentable inventions, discoveries or
 21 other know-how developed and Controlled by either Party after the Effective Date
 22 that utilize, incorporate, derive directly from, directly relate to, are made using or
 are based directly on the SGI Technology

23 Award at 23 (quoting Dkt. 12, Ex. 1, § 1.1.32).⁶

24 ⁶ Seagen acknowledges that any assignable IP must meet each of the separate requirements of being an
 25 “(1) ‘Improvement’ that (2) ‘relates to the Drug Conjugation Technology.’” Dkt. 11 at 7.

1 As the Award explains, “for completeness” of analysis, Seagen failed to prove that DSC’s
 2 technology reasonably meets the definition of the term “Improvements” in Section 1.1.32 of the
 3 Agreement because DSC’s technology that Seagen alleged to be “Improvement IP” does not
 4 “utilize, incorporate, derive directly from, directly relate to, … made using or … based directly on
 5 the SGI Technology.” Award at 45 n.12. The Arbitrator stated that this predicate requirement is
 6 a wholly separate finding, even though it is based on the same overall underlying evidence. *Id.*
 7 This finding was made in the context of the entire evidentiary record, including extensive fact and
 8 expert testimony, and is one that a court is not authorized to second-guess. *See supra* Section
 9 IV.A). Seagen’s Petition lacks *any mention* of the Award’s discussion of this predicate factual
 10 finding. Instead, in disregard of the Arbitrator’s finding, Seagen claims it “presented
 11 overwhelming evidence” that DSC’s technology was an “Improvement.” Dkt. 11 at 7. But the
 12 Arbitrator explicitly rejected Seagen’s assertions after considering the evidence. Award at 45 n.12.
 13 This is fatal to Seagen’s Petition.

14 Seagen also asserts that the Arbitrator made no findings as to Seagen’s alleged evidence
 15 that DSC “used and incorporated Seagen’s proprietary linker architecture.” Dkt. 11 at 11. Seagen
 16 is incorrect. The Arbitrator credited Dr. Lambert’s testimony, essentially unchallenged during
 17 cross-examination, that Seagen’s contemporaneous documents reflected that DSC’s technology
 18 was *not* “plausibly related to or arose from Seagen’s ADC technology, either generally or with
 19 respect to the Collaboration Agreement.” Award at 44. The Arbitrator’s factual finding as to the
 20 “Improvement” requirement provides an independent ground supporting the Award. *See Protech*
 21 *Minerals, Inc. v. Suzuki*, No. 2:20-cv-00969-TSZ, 2020 WL 6939637, at *2 (W.D. Wash. Nov. 25,
 22 2020). The Court can deny Seagen’s Petition on this basis alone. *See Sea Shipping Inc. v. Half*
 23 *Moon Shipping, LLC*, 848 F. Supp. 2d 448, 455 (S.D.N.Y. 2012).⁷

24 ⁷ To the extent Seagen attempts to explain away the Arbitrator’s finding in its reply brief, Seagen is precluded from
 25 doing so. *Camarata v. McDonald’s Corp.*, No. C19-6236JLR, 2021 WL 1893753, at *3 (W.D. Wash. May 11, 2021)
 (citing cases).

C. Seagen's Petition to Vacate Should Also Be Dismissed As Untimely

Under 9 U.S.C. § 12, Seagen was required to serve its Petition within three months after the Award was delivered. Courts in this Circuit have strictly construed this requirement. *See, e.g.*, *IKON Global Mkts., Inc. v. Appert*, No. C11-cv-53RAJ, 2011WL 9687842, at *3 (W.D. Wash. July 28, 2011) (“interpret[ing] Section 12 in accordance with its plain meaning” and requiring service of a petition to vacate within three months); *see also Webster v. A.T. Kearney, Inc.*, 507 F.3d 568, 570, 573 (7th Cir. 2007) (motion to vacate was untimely where not *served* within three months).

The three-month deadline for Seagen to serve its Petition on DSC expired on November 14, 2022. *Stevens v. Jiffy Lube Int'l, Inc.*, 911 F.3d 1249, 1252 (9th Cir. 2018). Seagen had not obtained a summons by that time, let alone served DSC with its Petition. *See* Dkt 21 (summons issued on November 15, 2022). Nevertheless, Seagen filed a purported “proof of service,” claiming to have served DSC on November 10, 2022 by sending: (1) a fax of its Petition to DSC’s R&D Planning Department (addressed to a former employee); (2) a fax of its Petition to DSC’s counsel of record in the Arbitration; and (3) an email attaching its Petition to DSC’s counsel of record in the Arbitration. Dkt. 37, at 2. Section 12 of the FAA, however, does not authorize service of a petition to vacate by fax or email.⁸ Even construing this fax and/or email as an attempt at “alternative service” under Federal Rule of Civil Procedure 4(f)(3), prior Court approval would have been required, *see Brockmeyer v. May*, 383 F.3d 798, 805-06 (9th Cir. 2004), which Seagen did not seek. Moreover, “actual notice” of a petition “is not sufficient to cure defectively executed service.” *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007).⁹

⁸ 9 U.S.C. § 12 does not prescribe any procedure for serving entities, like DSC, that are not a resident in any U.S. judicial district. Courts in other circuits have permitted service on nonresident parties in compliance with Federal Rule of Civil Procedure 4. *See, e.g., Technologists, Inc. v. MIR's Ltd.*, 725 F. Supp. 2d 120, 126-127 (D.D.C. 2010).

⁹ See also *Belz v. Morgan Stanley Smith Barney, LLC*, No. 3:13-cv-636-J-34 MCR, 2014 WL 897048, at *7 n.9 (M.D. Fla. Mar. 5, 2014) (refusing to treat “actual notice” of a vacatur motion as “a sufficient basis for finding an exception to the FAA’s requirements”); *Ballantine v. Dominican Republic*, No. 19-cv-3598 (TJK), 2020 WL 4597159, at *4

1 Seagen contends that it was not required to serve its Petition according to Section 12 of the
 2 FAA (or Federal Rule of Civil Procedure 4). Dkt. 51 at 3. In support, Seagen points to an
 3 unreported out-of-circuit district court decision, *Aperion Care, Inc. v. Senwell Senior Inv.*
 4 *Advisors*, No. 22 C 3120, 2022 WL 10505696 (N.D. Ill. Oct. 17, 2022). That case found email
 5 service of a vacatur motion proper (*id.* at *2) because the parties had agreed to that type of service
 6 under Rule R-43(b) of the AAA Commercial Arbitration Rules, which permits email service for
 7 “the notices required by these rules,” provided the parties and the arbitrator agree to that service.
 8 AAA Commercial Arbitration Rules, R-43(b). But other courts—circuit courts and district courts
 9 alike—have rejected this argument.¹⁰ *Aperion* overlooked that the AAA Commercial Arbitration
 10 Rules have a separate provision that requires service *by mail* for “[a]ny papers, notices, or process
 11 necessary or proper for the initiation or continuation of an arbitration under these rules, *for any*
 12 *court action in connection therewith.*” AAA Commercial Arbitration Rules, R-43(a) (emphasis
 13 added.) Rule R-43(a) is the only provision that might apply to serving a notice or other process to
 14 initiate a vacatur action in federal court—and it requires service by mail. Seagen’s Petition is
 15 therefore untimely.

16

17

18

19

20 (D.D.C. Aug. 11, 2020) (treating “actual notice” as sufficient “would eviscerate the FAA’s language in Section 12”) (citations omitted).

21 ¹⁰ See, e.g., *Dalla-Longa v. Magnetar Cap. LLC*, 33 F.4th 693, 696 (2d Cir. 2022) (rejecting the argument that
 22 “agreement to accept papers by email in the arbitration proceedings extends to service of motion papers in the district
 23 court to vacate the arbitration award”); *O’Neal Constructors, LLC v. DRT Am., LLC*, 991 F.3d 1376, 1378-81 (11th
 24 Cir. 2021) (email service of a courtesy copy of a memorandum in support of a motion to vacate does not constitute
 25 “the required service … under 9 U.S.C. § 12” where “the party to be served did not expressly consent in writing to
 service by email”); *Shaut v. Hatch*, No. 1:18-cv-420, 2018 WL 3559081, at *3 (N.D. Ohio July 24, 2018) (email
 service insufficient even where “email service was used in the underlying arbitration”); *Benedict v. Amgen USA Inc.*,
 No. 1:19-cv-113, 2019 WL 1597007, at *3 (N.D. Ohio Apr. 15, 2019) (“service by email would be a deviation from
 [Federal Rule of Civil Procedure 4]”).

1 **V. SEAGEN'S BAD FAITH PETITION JUSTIFIES**
 2 **AWARDING DSC ITS COSTS AND ATTORNEYS' FEES**

3 Seagen's Petition presents a rare instance where awarding both costs and attorneys' fees is
 4 appropriate and warranted because Seagen's vacatur challenge is sanctionable on multiple
 5 grounds. Federal courts have inherent authority to award attorneys' fees in judicial proceedings
 6 arising from an arbitral award where "the losing party has acted in bad faith, vexatiously, wantonly
 7 or for oppressive reasons." *Ministry of Def. & Support for the Armed Forces of the Islamic*
Republic of Iran v. Cubic Defense Sys., Inc., 665 F.3d 1091, 1104 (9th Cir. 2011).¹¹ This power
 8 derives from a court's inherent authority to deter bad faith litigation tactics. *Id.*¹²

9 This Court should exercise that inherent authority here and award DSC its costs and
 10 attorneys' fees because Seagen's cynical attacks on the Award go beyond legitimate advocacy.
 11 First, as discussed in detail in Section IV.B.3 above, the Arbitrator expressly found that DSC's
 12 technology was not an "Improvement." Award at 45 n.12. Yet Seagen filed its Petition anyway,
 13 repeatedly calling DSC's Technology "Improvement IP," apparently hoping to evade the Award's
 14 factual predicate through silence about the fact that the Arbitrator rejected Seagen's use of this
 15 specific verbiage.¹³ This is bad faith litigation.

16 Second, Seagen is—or should be—well aware that "[u]nder § 10(a)(4), the question for a
 17 judge is not whether the arbitrator construed the parties' contract correctly, but whether he
 18 construed it at all." *Oxford Health*, 569 U.S. at 573; *see also Lagstein v. Certain Underwriters at*

20 ¹¹ Other circuits agree. *See, e.g., B.L. Harbert Int'l, LLC v. Hercules Steel Co.*, 441 F.3d 905, 913 (11th Cir. 2006),
 21 abrogated on other grounds by *Frazier v. CitiFinancial Corp.*, 604 F.3d 1313 (11th Cir. 2010) ("[I]f a party on the
 22 short end of an arbitration award attacks that award in court without any real legal basis for doing so, that party should
 23 pay sanctions."); *Lewis v. Circuit City Stores, Inc.*, 500 F.3d 1140, 1154 (10th Cir. 2007).

24 ¹² An award of DSC's costs and attorneys' fees is also warranted because Seagen consented to a provision that entitles
 25 the prevailing party to its "costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other
 26 witnesses" in the Arbitration. Dkt. 12, Ex. 1, § 19.3.4. *See Protech Minerals*, 2020 WL 6939637, at *3 (awarding
 27 fees because "[t]he Agreement provides that the prevailing party in an action shall recover their costs and attorney
 28 fees"). Seagen's Petition is a mere continuation of its effort to re-litigate what it lost in the Arbitration.

29 ¹³ The Arbitrator showed his disagreement with Seagen's characterization by repeatedly using instead the phrase "the
 30 so-called 'Improvement IP'" in discussing Seagen's allegations. *See* Award at 35, 39, 40.

1 *Lloyd's, London*, 607 F.3d 634, 640-41 (9th Cir. 2010) (Section 10 “does not sanction judicial
 2 review of the merits, and whether or not the panel’s findings are supported by the evidence in the
 3 record is beyond the scope of our review”) (internal quotation marks and citation omitted). Yet
 4 Seagen never cites *Oxford Health* and repeatedly asks this Court to do what *Oxford Health*
 5 forbids—vacate the Award based on the alleged merits of the Arbitrator’s contract construction.
 6 *See, e.g.*, Dkt. 11 at 2, 15 (claiming the Arbitrator missed “undisputed facts” and “undisputed
 7 evidence” favorable to Seagen). Seagen’s 66 exhibits in putative support of its Petition abundantly
 8 illustrate its prohibited attempt to “rerun the matter in a court.” *Oxford Health*, 569 U.S. at 573.
 9 Seagen’s Petition reflects a careless disregard of controlling precedent.¹⁴ This, too, warrants
 10 sanctions. *See SSA Terminals v. Machinists Auto. Trades Dist. Lodge No. 190*, 244 F. Supp. 2d
 11 1031, 1040 (N.D. Cal. 2003) (awarding attorneys’ fees where the court found the vacatur challenge
 12 “to be nothing more than a disagreement with the Arbitrator’s findings on the merits of the case,”
 13 which was “frivolous because it [was] destined to fail”).

14 *Third*, Seagen’s primary arguments constitute nothing more than attacks on the Arbitrator’s
 15 weighing of the evidence,¹⁵ his credibility determinations,¹⁶ and his alleged erroneous
 16 interpretation of the Agreement.¹⁷ In *Pharmangiaga*, for example, the district court awarded fees

17¹⁴ Seagen’s requested relief (a rehearing “before a new arbitrator,” *see* Dkt. 1 at 6 and Dkt. 11 at 24), is contrary to
 18 established Supreme Court precedent on this issue, as well. *See Stolt-Nielsen*, 559 U.S. at 677 (if a court vacates an
 19 award under 9 U.S.C. § 10, that court “must either ‘direct a rehearing by the arbitrators’ or decide the question
 originally referred to the panel”).

15 *See, e.g.*, Dkt. 11 at 15 (claiming that the Award did not account for “Seagen’s powerful evidentiary showing”).

16 *Compare* Dkt. 11 at 4-6 (extensively citing the Bertozzi Report), *with* Award at 44 n.11 (“to the extent that Dr. Bertozzi or any other Seagen witness has offered disparate testimony and/or opinions with respect to each of the aforementioned points, the Arbitrator has accorded greater weight to the testimony and opinions of Dr. Lambert”).

17 *Compare* Dkt. 11 at 1 (“Seagen showed that the DSC technology met all three subparts [of the Drug Conjugation Technology definition] with evidence from DSC’s own patents and publications”), *with* Award at 45 (“For these reasons [*i.e.*, pages 38-44 of the Award], the Arbitrator concludes that DS-8201 does not meet the definition of ‘Drug Conjugation Technology’ under Section 1.1.17 of the Collaboration Agreement.”); *see also* Dkt. 11 at 11 (arguing that the Award’s “contract interpretation” was wrong); *id.* at 15 (attacking the Arbitrator’s “interpretation of subpart (a)” of the Drug Conjugation Technology definition). Challenging the Arbitrator’s contract interpretation is itself sanctionable. *See, e.g.*, *Dreis & Krump Mfg. Co. v. Int’l Ass’n of Machinists & Aerospace Workers, Dist. No. 8*, 802 F.2d 247, 254 (7th Cir. 1986).

1 in part because the petitioner’s “principal arguments” for vacatur were disputes with the
 2 arbitrator’s credibility determinations and weighing of the evidence. *See* 344 F.Supp.3d at 1146.
 3 Seagen’s positions here are similarly sanctionable because they lie “outside the scope of judicial
 4 review” under the FAA. *Id.*; *see also* *SSA Terminals*, 244 F. Supp. 2d at 1040 (awarding attorneys’
 5 fees where “the Arbitrator’s 35-page Award more than adequately addresses all the arguments
 6 Petitioner has raised its motion [and a] careful reading of the Award should have convinced
 7 Petitioner of the futility of moving this court to vacate the Award”); *cf. Purus Plastics GmbH v.*
 8 *Eco-Terr Distrib., Inc.*, No. C18-0277, 2018 WL 3064817, at *11 (W.D. Wash. June 21, 2018)
 9 (awarding prejudgment interest where “much of Eco-Terr’s motion attempts to relitigate issues
 10 before the arbitration panel”).

11 *Fourth*, Seagen repeatedly misrepresents the Award. For example, Seagen makes the
 12 hyperbolic assertion that the Award “does not address any of the compelling evidence Seagen
 13 presented to show liability.” Dkt. 11 at 11. The Award expressly states—multiple times—that *all*
 14 of Seagen’s evidence was considered.¹⁸ Seagen’s gross misrepresentation of the Award
 15 compounds the vexatiousness of Seagen’s Petition. While “[c]ourts cannot prevent parties from
 16 trying to convert arbitration losses into court victories,” they “can and should insist that if a party
 17 on the short end of an arbitration award attacks that award in court without any real legal basis for
 18 doing so, that party should pay sanctions.” *Hercules Steel*, 441 F.3d at 913.¹⁹

19 VI. CONCLUSION

20 This Court should deny Seagen’s Petition and award DSC its costs and attorneys’ fees.

21
 22 ¹⁸ *See, e.g.*, Award at 20 (“[f]or efficiency and economy, this Interim Award concisely recites only those facts and
 23 discusses only those legal arguments that the Arbitrator considers necessary to establish the basis for resolution of the
 24 Parties’ claims, defenses, and requests for relief”); Award at 41 n.10 (observing that the Arbitrator’s findings of fact
 25 were in view of “the entire (voluminous) evidentiary record”).

¹⁹ DSC requests the right to file an appropriate motion quantifying its costs and fees if this Court awards them to DSC.
See Fed. R. Civ. P. 54(d)(2)(B).

1 DATED: January 19, 2023
2

3 CORR CRONIN LLP
4

5 /s/ Jack Lovejoy
6 Steven W. Fogg
7 WSBA No. 23528
8 sfogg@corrchronin.com
9 Jack M. Lovejoy
10 WSBA No. 36962
11 jlovejoy@corrchronin.com
12 CORR CRONIN LLP
13 1015 Second Avenue, Floor 10
14 Seattle, Washington 98104-1001
15 Telephone: (206) 625-8600
16 Fax: (206) 625-0900
17

18 OF COUNSEL:
19

20 Preston K. Ratliff II
21 prestonratliff@paulhastings.com
22 Dana Weir
23 danaweir@paulhastings.com
24 Amanda L. Pober
25 amandapober@paulhastings.com
PAUL HASTINGS LLP
200 Park Avenue
New York, New York 10166
Telephone: (212) 318-6000

Joseph R. Profaizer
joeprofaizer@paulhastings.com
Igor V. Timofeyev
igortimofeyev@paulhastings.com
PAUL HASTINGS LLP
2050 M Street NW
Washington, DC 20036
Telephone: (202) 551-1700

23
24 *Attorneys for Respondent*
25 *Daiichi Sankyo Company, Limited*

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2023, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

s/ Wen L. Cruz
Wen L. Cruz